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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/749,036	12/28/2000	Veronique Ferrari	05725.0832-00	5474

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EXAMINER

HOWARD, SHARON LEE

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/13/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/749,036

Applicant(s)

FERRARI ET AL.

Examiner

Sharon L. Howard

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 92-230,235-242,245-248,250,251,253,256-259,262,263,269,273-275 and 279-287 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9,10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Continuation of Disposition of Claims: Claims pending in the application are 92-230,235-242,245-248,250,251,253,256-259,262,263,269,273-275 and 279-287.

The 112 (second paragraph) rejections have been overcome.

Claims 1,38-40,92,129-131,185,214,218-230,251,279-282 have been amended.

Claims 92-230,235-242,245-248,250,251,253,256-
259,262,263,266,267,269,273-275 and 279-287 are pending.

Claim Rejections - 35 USC § 112

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant define at page 26 of the specification, "representative pasty fatty substances which may be used in the composition according to the invention include lanolins and lanolin derivatives such as acetylated lanolins or oxypropylenated lanolins or isopropyl lanolate, having a viscosity of from 18 to 21 Pa.s, for instance 19 to 20.5 Pa.s, and/or a melting point of from 30 to 55 C"

However, the claim recites "at least one pasty fatty substance, wherein said at least one pasty fatty substance comprises at least one liquid fraction and at least one solid fraction at room temperature". Which pasty fatty substances recited above meet this requirement? In order to complete the record, detailed explanation is requested.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 92-230,235-242,245-248,250,251,253,256-259,262,263,269,273-

275,279-287 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Pavlin (U.S. Patent No. 5,783,657) and Strianse (U.S. patent No. 3,148,125).

Pavlin teaches a structuring polymer consisting of a low molecular weight, ester-terminated polyamide resin combined with a low-polarity liquid hydrocarbon to form a transparent (gel) composition (see abstract and col.15, lines 12-15). Pavlin teaches that the polyamide resin has a softening point of 80 C to about 130 C (col.7, lines 32-35). Pavlin teaches an ester-terminated polyamide of the formula (1) as claimed, wherein the ester groups comprises about 10% to about 50% of the ester and amide groups (col.4, lines 1-67). Pavlin also teaches a carbonyl group (col.6, lines 8-65), a hydrocarbon having 10 to 30 carbon atoms (col.15, lines 23-25) consisting of mineral oil (col.15, lines 26-44), fatty acid esters (col.15, lines 59-67, col.16, lines 1-33) which comprises a pendant fatty chain with a polymer, having alkyl or alkenyl groups comprising at least four carbon atoms (col.5, lines 3-22). Pavlin discloses carboxylic acids (col.16, lines 23-29) and a method for applying the gel composition to the skin (col.14, lines 30-47). Pavlin teaches lipstick, makeup, skin moisturizers, hair care products, sun care products and deodorant/antiperspirant products which comprises the gel composition (col.14, lines 37-47). Pavlin also discloses using other ingredients such as colorants,

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With respect to the silent teaching of the hydrophilic/lipophilic balance value, the teaching is inherent, since the prior art teaches that the ester-terminated polyamide form gels with low polar (nonvolatile) liquid hydrocarbons at room temperature (col.13, lines 47-58 and col.15, lines 12-25).

Pavlin does not teach ingredient (ii), which recites "at least one pasty fatty substance, wherein said at least one pasty fatty substance comprises at least one liquid fraction and at least one solid fraction at room temperature", but the patent is drawn to lipsticks (see col.3, lines 31-36 and at col.14, lines 29-41).

However, Strianse teaches a clear lipstick comprising lanolin alcohols (col.3, line70) and fatty acid esters such as oleates, mono laureates and linoleates (col.3, lines 48-53), which read on a pasty fatty substance.

The expected result would be an anhydrous lipstick composition comprising a structuring polymer and a pasty fatty substance.

It would have been within the skill of the ordinary practitioner at the time the invention was made to use the teachings of Pavlin in the manner taught by Strianse. One having ordinary skill in the art would have been motivated to modify the composition of Pavlin to include a pasty fatty substance, because Pavlin teaches an anhydrous composition comprising a transparent gel composition which comprises a structuring polymer consisting of an ester-terminated polyamide resin combined with a liquid hydrocarbon.

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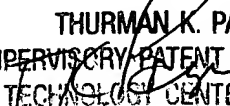
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (703) 308-4359. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-3121 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.



Sharon Howard
July 30, 2003



THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600